Maben Energy Corporation and H. Lynden Graham Jr., Trustee in Bankruptcy *and* United Mine Workers of America, District 17, AFL–CIO (Successor Union to United Mine Workers of America, District 29, AFL–CIO). Case 9–CA–32798

March 26, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge filed by the Union on April 5, 1995, the General Counsel of the National Labor Relations Board issued a complaint on December 4, 1996, against Maben Energy Corporation and H. Lynden Graham Jr., Trustee in Bankruptcy, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On February 18, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On February 20, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated January 30, 1997, notified the Respondent that unless an answer were received by February 7, 1997, a Motion for Summary Judgment would be filed.

Although the Respondent is in bankruptcy, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See id., and cases cited therein.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged in the operation of coal mines in and around Raleigh County, West Virginia. During the 12-month period preceding the filing of the charge, the Respondent, in conducting its operations, sold and shipped coal valued in excess of $50,000 from its West Virginia facilities directly to customers located outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of [the Respondent] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by [the Respondent]), repair and maintenance work normally performed at the mine site or at a central shop[s] of [the Respondent] and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by [the Respondent], excluding all coal inspectors, weigh bosses at mines where men are paid by ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

From 1978 to March 1996, either the Union or the predecessor United Mine Workers of America, District 29, AFL–CIO, was the designated exclusive collective-bargaining representative of the unit and was recognized as such representative by the Respondent. This recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective from December 16, 1993, to August 1, 1998 (the 1993-1998 agreement). At all times from 1978 to March 1996, based on Section 9(a) of the Act, the predecessor Union, United Mine Workers of America, District 29, AFL–CIO, was the exclusive collective-bargaining representative of the unit.

About March 1996, United Mine Workers of America, District 29, AFL–CIO, was merged into and was subsumed by United Mine Workers of America, District 17, AFL–CIO, the Union herein. Since March 1996, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since March 13, 1995, the Respondent failed to maintain contractually required health care benefits for the unit employees. About March 13, 1995, the Respondent also made unilateral changes in employee health insurance, life insurance, and other benefits which were not authorized by the United States Bankruptcy Court. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without the Union's consent or affording it an opportunity to bargain with respect to this conduct and the effects of this conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to maintain contractually required health care benefits for its unit employees and unilaterally making changes in unit employee health insurance, life insurance, and other benefits that were not authorized by the United States Bankruptcy Court, we shall order the Respondent to restore the employees' health care benefits, employee health insurance, life insurance, and other benefits that were in effect before the unlawful changes were made, and make the unit employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Maben Energy Corporation and H. Lynden Graham Jr., Trustee in Bankruptcy, Raleigh County, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally failing to maintain health care benefits for the unit employees as required by the 1993–1998 agreement or making unilateral changes in employee health insurance, life insurance, or other benefits which are not authorized by the United States Bankruptcy Court.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the unit employees' contractually required health care benefits and the unit employees' health insurance, life insurance, and other benefits that were in effect before the unlawful changes were made, and make the unit employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in the remedy section of this decision.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facilities in Raleigh County, West Virginia, copies of the attached notice marked ''Appendix.''[1] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

current employees and former employees employed by the Respondent at any time since April 5, 1995.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 26, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally fail to maintain health care benefits for our unit employees as required by the 1993–1998 collective-bargaining agreement or make unilateral changes in unit employees' health insurance, life insurance, or other benefits which are not authorized by the United States Bankruptcy Court.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore our unit employees' contractually required health care benefits and our unit employees' health insurance, life insurance, and other benefits that were in effect before the unlawful changes were made, and make our unit employees whole by reimbursing them for any expenses ensuing from our unlawful conduct, as set forth in a decision of the National Labor Relations Board.

MABEN ENERGY CORPORATION AND H. LYNDEN GRAHAM JR., TRUSTEE IN BANKRUPTCY